

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DOROTHY SUMPTER

Claimant

VS.

EATON CORPORATION

Respondent

Self-Insured

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) Docket Nos. 227,148 & 228,503

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ORDER

Claimant appeals from a December 18, 1997, preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore in the above two docketed claims.

ISSUES

The Administrative Law Judge granted claimant medical treatment for her left shoulder injury in Docket No. 227,148 but denied claimant's request for preliminary benefits in Docket No. 228,503 finding the knee conditions complained of by claimant in that case did not arise out of and in the course of her employment with respondent. That finding and the resulting denial of treatment in Docket No. 228,503 is the sole issue for Appeals Board review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the present record and considering the briefs of the parties, the Appeals Board finds that the Order by the Administrative Law Judge should be affirmed.

Claimant alleges personal injury by accident each and every working day through October 20, 1997. The Appeals Board finds that the osteoarthritis or degenerative joint disease condition from which claimant suffers in both knees was not caused by her employment with respondent. The medical testimony establishes that at least since September of 1996, any worsening of her condition has been due to personal factors including claimant's weight and age and not by a hazard of employment. To the extent

claimant's work may have aggravated her symptoms, the record also shows that almost any type of everyday activity would have a tendency to aggravate claimant's condition. See Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980); Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore dated December 18, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

c: Scott J. Mann, Hutchinson, KS
Edward D. Heath, Jr., Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director